

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 378

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC
SCHOOL CAPITAL OUTLAY ACT TO CHANGE CERTAIN CRITERIA FOR GRANTS
FOR LEASE PAYMENTS, TO PROVIDE AN OFFSET FOR CERTAIN FEDERAL
RECEIPTS, TO ALLOW FOR ADJUSTMENTS FOR CERTAIN SCHOOL
FACILITIES IN REMOTE RURAL AREAS, TO FUND IMPROVEMENTS TO
ATHLETIC FIELDS IN RURAL AREAS AND NECESSARY ROOF REPAIRS AND
REPLACEMENTS AND TO LIMIT ANNUAL EXPENDITURES FOR CERTAIN
OPERATING COSTS; REVISING THE STANDARDS REQUIRED FOR CHARTER
SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL
IMPROVEMENTS ACT TO REQUIRE CERTAIN DISTRIBUTIONS TO CHARTER
SCHOOLS AND TO EXPAND THE DEFINITION OF "CAPITAL IMPROVEMENTS";
MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-8B-4.2 NMSA 1978 (being Laws 2005,

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1 Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2,
2 as amended) is amended to read:

3 "22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

4 A. The facilities of a charter school that is
5 approved on or after July 1, 2005 and before July 1, ~~[2010]~~
6 2015 shall meet educational occupancy standards required by
7 applicable New Mexico construction codes.

8 B. The facilities of a charter school ~~[that is in~~
9 ~~existence, or has been approved, prior to July 1, 2005]~~ whose
10 charter has been renewed at least once shall be evaluated,
11 prioritized and eligible for grants pursuant to the Public
12 School Capital Outlay Act in the same manner as all other
13 public schools in the state; provided that for charter school
14 facilities in leased facilities, grants may be used ~~[as]~~ to
15 provide additional lease payments for leasehold improvements
16 made by the lessor.

17 C. On or after July 1, ~~[2010, an application for a~~
18 ~~charter shall not be approved]~~ 2015, a new charter school shall
19 not open and an existing charter shall not be renewed unless
20 the charter school:

21 (1) is housed in a ~~[public]~~ building that is:

22 (a) owned by the charter school, the
23 school district, the state, an institution of the state,
24 another political subdivision of the state, the federal
25 government or one of its agencies or a tribal government; ~~[and~~

1 ~~(b) subject to evaluation and~~
 2 ~~prioritization and eligible for grants pursuant to the Public~~
 3 ~~School Capital Outlay Act in the same manner as all other~~
 4 ~~public schools in the state;~~

5 ~~(2) is housed in a building that meets the~~
 6 ~~statewide adequacy standards developed pursuant to the Public~~
 7 ~~School Capital Outlay Act and that is being leased by the~~
 8 ~~charter school pursuant to a financing agreement that contains~~
 9 ~~an option to purchase for a price that is reduced according to~~
 10 ~~the lease payments made;] or~~

11 (b) subject to a lease purchase
 12 arrangement that has been entered into and approved pursuant to
 13 the Public School Lease Purchase Act; or

14 ~~[(3)]~~ (2) if it is not housed in a building
 15 described in Paragraph (1) ~~[or (2)]~~ of this subsection,
 16 demonstrates that:

17 (a) the facility in which the charter
 18 school is housed meets the statewide adequacy standards
 19 developed pursuant to the Public School Capital Outlay Act and
 20 the owner of the facility is contractually obligated to
 21 maintain those standards at no additional cost to the charter
 22 school or the state; and

23 (b) either: 1) public buildings are not
 24 available or adequate for the educational program of the
 25 charter school; or 2) the owner of the facility is a nonprofit

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1 entity specifically organized for the purpose of providing the
2 facility for the charter school.

3 D. The public school capital outlay council:

4 (1) shall determine whether facilities of a
5 charter school meet the educational occupancy standards
6 pursuant to the requirements of Subsection A of this section

7 ~~[(2) shall determine whether facilities of a~~
8 ~~charter school meet]~~ or the requirements of Subsections B and C
9 of this section, as applicable; and

10 ~~[(3)]~~ (2) upon a determination that specific
11 requirements are not appropriate or reasonable for a charter
12 school, may grant a variance from those requirements for that
13 charter school."

14 Section 2. Section 22-24-4 NMSA 1978 (being Laws 1975,
15 Chapter 235, Section 4, as amended) is amended to read:

16 "22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--
17 USE.--

18 A. The "public school capital outlay fund" is
19 created. Balances remaining in the fund at the end of each
20 fiscal year shall not revert.

21 B. Except as provided in Subsections G and I
22 through L of this section, money in the fund may be used only
23 for capital expenditures deemed necessary by the council for an
24 adequate educational program.

25 C. The council may authorize the purchase by the

1 public school facilities authority of portable classrooms to be
2 loaned to school districts to meet a temporary requirement.
3 Payment for these purchases shall be made from the fund. Title
4 and custody to the portable classrooms shall rest in the public
5 school facilities authority. The council shall authorize the
6 lending of the portable classrooms to school districts upon
7 request and upon finding that sufficient need exists.
8 Application for use or return of state-owned portable classroom
9 buildings shall be submitted by school districts to the
10 council. Expenses of maintenance of the portable classrooms
11 while in the custody of the public school facilities authority
12 shall be paid from the fund; expenses of maintenance and
13 insurance of the portable classrooms while in the custody of a
14 school district shall be the responsibility of the school
15 district. The council may authorize the permanent disposition
16 of the portable classrooms by the public school facilities
17 authority with prior approval of the state board of finance.

18 D. Applications for assistance from the fund shall
19 be made by school districts to the council in accordance with
20 requirements of the council. Except as provided in Subsection
21 K of this section, the council shall require as a condition of
22 application that a school district have a current five-year
23 facilities plan, which shall include a current preventive
24 maintenance plan to which the school adheres for each public
25 school in the school district.

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1 E. The council shall review all requests for
2 assistance from the fund and shall allocate funds only for
3 those capital outlay projects that meet the criteria of the
4 Public School Capital Outlay Act.

5 F. Money in the fund shall be disbursed by warrant
6 of the department of finance and administration on vouchers
7 signed by the secretary of finance and administration following
8 certification by the council that an application has been
9 approved or an expenditure has been ordered by a court pursuant
10 to Section 22-24-5.4 NMSA 1978. At the discretion of the
11 council, money for a project shall be distributed as follows:

12 (1) up to ten percent of the portion of the
13 project cost funded with distributions from the fund or five
14 percent of the total project cost, whichever is greater, may be
15 paid to the school district before work commences with the
16 balance of the grant award made on a cost-reimbursement basis;
17 or

18 (2) the council may authorize payments
19 directly to the contractor.

20 G. Balances in the fund may be annually
21 appropriated for the core administrative functions of the
22 public school facilities authority pursuant to the Public
23 School Capital Outlay Act and, in addition, balances in the
24 fund may be expended by the public school facilities authority,
25 upon approval of the council, for project management expenses;

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1 provided that:

2 (1) the total annual expenditures from the
3 fund for the core administrative functions pursuant to this
4 subsection shall not exceed five percent of the average annual
5 grant assistance authorized from the fund during the three
6 previous fiscal years; and

7 (2) any unexpended or unencumbered balance
8 remaining at the end of a fiscal year from the expenditures
9 authorized in this subsection shall revert to the fund.

10 H. Up to [~~thirty million dollars (\$30,000,000)~~] ten
11 million dollars (\$10,000,000) of the fund may be allocated
12 [~~annually~~] by the council for expenditure in fiscal years [~~2006~~
13 ~~and 2007~~] 2010 through 2012 for a roof repair and replacement
14 initiative with projects to be identified by the council
15 pursuant to Section 22-24-4.3 NMSA 1978; provided that [~~all~~]
16 money allocated pursuant to this subsection shall be expended
17 [~~prior to September 1, 2008~~] within two years of the
18 allocation.

19 I. The fund may be expended annually by the council
20 [~~in fiscal years 2006 through 2020~~] for grants to school
21 districts for the purpose of making lease payments for
22 classroom facilities, including facilities leased by charter
23 schools. The grants shall be made upon application by the
24 school districts and pursuant to rules adopted by the council;
25 provided that an application on behalf of a charter school

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1 shall be made by the school district but, if the school
2 district fails to make an application on behalf of a charter
3 school, the charter school may submit its own application. The
4 following criteria shall apply to the grants:

5 (1) the amount of a grant to a school district
6 shall not exceed:

7 (a) the actual annual lease payments
8 owed for leasing classroom space for schools, including charter
9 schools, in the district; or

10 (b) seven hundred dollars (\$700)
11 multiplied by the number of MEM using the leased classroom
12 facilities; provided that in fiscal year 2009 and in each
13 subsequent fiscal year, this amount shall be adjusted by the
14 percentage [~~increase~~] change between the penultimate calendar
15 year and the immediately preceding calendar year of the
16 consumer price index for the United States, all items, as
17 published by the United States department of labor [~~and~~
18 ~~provided further that if the total grants awarded pursuant to~~
19 ~~this paragraph would exceed the total annual amount available,~~
20 ~~the rate specified in this subparagraph shall be reduced~~
21 ~~proportionately~~];

22 (2) a grant received for the lease payments of
23 a charter school may be used by that charter school as a state
24 match necessary to obtain federal grants pursuant to the
25 federal No Child Left Behind Act of 2001;

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1 (3) at the end of each fiscal year, any
2 unexpended or unencumbered balance of the appropriation shall
3 revert to the fund;

4 (4) no grant shall be made for lease payments
5 due pursuant to a financing agreement under which the
6 facilities may be purchased for a price that is reduced
7 according to the lease payments made unless:

8 (a) the agreement has been approved
9 pursuant to the provisions of the Public School Lease Purchase
10 Act; and

11 (b) the facilities are leased by a
12 charter school;

13 ~~[(4)]~~ (5) if the lease payments are made
14 pursuant to a financing agreement under which the facilities
15 may be purchased for a price that is reduced according to the
16 lease payments made,

17 ~~[(a) a grant shall not be made unless~~
18 ~~the council determines that the leased facilities meet the~~
19 ~~statewide adequacy standards; and~~

20 ~~(b)]~~ neither a grant nor any provision of
21 the Public School Capital Outlay Act creates a legal obligation
22 for the school district or charter school to continue the lease
23 from year to year or to purchase the facilities nor does it
24 create a legal obligation for the state to make subsequent
25 grants pursuant to the provisions of this subsection;

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1 ~~[(5) the total amount expended from the fund~~
2 ~~pursuant to this subsection shall not exceed:~~

3 ~~(a) seven million five hundred thousand~~
4 ~~dollars (\$7,500,000) in fiscal year 2007; and~~

5 ~~(b) in fiscal year 2008 and each~~
6 ~~subsequent fiscal year, the maximum amount for the previous~~
7 ~~fiscal year adjusted by the percentage increase between the~~
8 ~~penultimate calendar year and the immediately preceding~~
9 ~~calendar year of the consumer price index for the United~~
10 ~~States, all items, as published by the United States department~~
11 ~~of labor] and~~

12 (6) as used in this subsection:

13 (a) "MEM" means: 1) the average
14 full-time-equivalent enrollment using leased classroom
15 facilities on the eightieth and one hundred twentieth days of
16 the prior school year; or 2) in the case of an approved charter
17 school that has not commenced classroom instruction, the
18 estimated full-time-equivalent enrollment that will use leased
19 classroom facilities in the first year of instruction, as shown
20 in the approved charter school application; provided that,
21 after the eightieth day of the school year, the MEM shall be
22 adjusted to reflect the full-time-equivalent enrollment on that
23 date; and

24 (b) "classroom facilities" or "classroom
25 space" includes the space needed, as determined by the minimum

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1 required under the statewide adequacy standards, for the direct
2 administration of school activities.

3 J. In addition to other authorized expenditures
4 from the fund, up to one percent of the average grant
5 assistance authorized from the fund during the three previous
6 fiscal years may be expended in each fiscal year by the public
7 school facilities authority to pay the state fire marshal, the
8 construction industries division of the regulation and
9 licensing department and local jurisdictions having authority
10 from the state to permit and inspect projects for expenditures
11 made to permit and inspect projects funded in whole or in part
12 under the Public School Capital Outlay Act. The authority
13 shall enter into contracts with the state fire marshal, the
14 construction industries division or the appropriate local
15 authorities to carry out the provisions of this subsection.
16 Such a contract may provide for initial estimated payments from
17 the fund prior to the expenditures if the contract also
18 provides for additional payments from the fund if the actual
19 expenditures exceed the initial payments and for repayments
20 back to the fund if the initial payments exceed the actual
21 expenditures.

22 K. Pursuant to guidelines established by the
23 council, allocations from the fund may be made to assist school
24 districts in developing and updating five-year facilities plans
25 required by the Public School Capital Outlay Act; provided

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1 that:

2 (1) no allocation shall be made unless the
3 council determines that the school district is willing and able
4 to pay the portion of the total cost of developing or updating
5 the plan that is not funded with the allocation from the fund.
6 Except as provided in Paragraph (2) of this subsection, the
7 portion of the total cost to be paid with the allocation from
8 the fund shall be determined pursuant to the methodology in
9 Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

10 (2) the allocation from the fund may be used
11 to pay the total cost of developing or updating the plan if:

12 (a) the school district has fewer than
13 an average of six hundred full-time-equivalent students on the
14 eightieth and one hundred twentieth days of the prior school
15 year; or

16 (b) the school district meets all of the
17 following requirements: 1) the school district has fewer than
18 an average of one thousand full-time-equivalent students on the
19 eightieth and one hundred twentieth days of the prior school
20 year; 2) the school district has at least seventy percent of
21 its students eligible for free or reduced-fee lunch; 3) the
22 state share of the total cost, if calculated pursuant to the
23 methodology in Paragraph (5) of Subsection B of Section 22-24-5
24 NMSA 1978, would be less than fifty percent; and 4) for all
25 educational purposes, the school district has a residential

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1 property tax rate of at least seven dollars (\$7.00) on each one
2 thousand dollars (\$1,000) of taxable value, as measured by the
3 sum of all rates imposed by resolution of the local school
4 board plus rates set to pay interest and principal on
5 outstanding school district general obligation bonds.

6 L. Upon application by a school district,
7 allocations from the fund may be made by the council for the
8 purpose of demolishing abandoned school district facilities,
9 provided that:

10 (1) the costs of continuing to insure an
11 abandoned facility outweigh any potential benefit when and if a
12 new facility is needed by the school district;

13 (2) there is no practical use for the
14 abandoned facility without the expenditure of substantial
15 renovation costs; and

16 (3) the council may enter into an agreement
17 with the school district under which an amount equal to the
18 savings to the district in lower insurance premiums are used to
19 reimburse the fund fully or partially for the demolition costs
20 allocated to the district.

21 M. Up to two million dollars (\$2,000,000) of the
22 fund may be allocated by the council for expenditure in fiscal
23 years 2009 through 2011 for lights and bleachers for certain
24 rural high school athletic fields pursuant to Section 22-24-4.5
25 NMSA 1978."

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1 Section 3. Section 22-24-4.3 NMSA 1978 (being Laws 2005,
2 Chapter 274, Section 6) is amended to read:

3 "22-24-4.3. ROOF REPAIR AND REPLACEMENT INITIATIVE.--

4 A. The council shall develop guidelines for a roof
5 repair and replacement initiative pursuant to the provisions of
6 this section.

7 B. A school district, desiring a grant award
8 pursuant to this section, shall submit an application to the
9 council. The application shall include an assessment of the
10 roofs on district school buildings that, in the opinion of the
11 school district, create a threat of significant property
12 damage.

13 C. The public school facilities authority shall
14 verify the assessment made by the school district and rank the
15 application with similar applications pursuant to a methodology
16 adopted by the council.

17 D. After a public hearing and to the extent that
18 money is available in the fund for such purposes, the council
19 shall approve roof repair or replacement projects on the
20 established priority basis; provided that no project shall be
21 approved unless the council determines that the school district
22 is willing and able to pay the portion of the total cost of the
23 project that is not funded with grant assistance from the fund.
24 In order to pay its portion of the total project cost, a school
25 district may use state distributions made to the school

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1 district pursuant to the Public School Capital Improvements Act
 2 or, if within the scope of the authorizing resolution, proceeds
 3 of the property tax imposed pursuant to that act.

4 E. The state share of the cost of an approved roof
 5 repair or replacement project shall be calculated pursuant to
 6 the methodology in Paragraph (5) of Subsection B of Section
 7 22-24-5 NMSA 1978.

8 F. A grant made pursuant to this section shall be
 9 expended by the school district [~~prior to September 1, 2008~~]
 10 within two years of the grant allocation."

11 Section 4. A new section of the Public School Capital
 12 Outlay Act, Section 22-24-4.5 NMSA 1978, is enacted to read:

13 "22-24-4.5. [NEW MATERIAL] GRANTS FOR RURAL ATHLETIC
 14 FIELD IMPROVEMENTS.--

15 A. Pursuant to the provisions of this section, the
 16 council shall develop guidelines for awarding grants for lights
 17 and bleachers for high school athletic fields that were
 18 previously funded pursuant to the Public School Capital Outlay
 19 Act.

20 B. A school district, desiring a grant award
 21 pursuant to this section, shall submit an application to the
 22 council, containing all information required by rule of the
 23 council.

24 C. Pursuant to rules adopted by the council, the
 25 public school facilities authority shall evaluate each

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1 application and rank the application with similar applications.

2 D. After a public hearing and to the extent that
3 money is available in the fund for such purposes, the council
4 shall approve grants on the established priority basis;
5 provided that no project shall be approved unless the council
6 determines that:

7 (1) the athletic field was built or acquired
8 as part of a project that was previously funded pursuant to the
9 Public School Capital Outlay Act;

10 (2) the athletic field is in a rural area;

11 (3) there is no other athletic field with
12 lights and bleachers that is practicably available for use by
13 the high school; and

14 (4) the school district is willing and able to
15 pay the portion of the total cost of the project that is not
16 funded with grant assistance from the fund.

17 E. The state share of an approved project shall be
18 calculated pursuant to the methodology in Paragraph (5) of
19 Subsection B of Section 22-24-5 NMSA 1978."

20 Section 5. Section 22-24-5 NMSA 1978 (being Laws 1975,
21 Chapter 235, Section 5, as amended) is amended to read:

22 "22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--
23 APPLICATION--GRANT ASSISTANCE.--

24 A. Applications for grant assistance, approval of
25 applications, prioritization of projects and grant awards shall

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1 be conducted pursuant to the provisions of this section.

2 B. Except as provided in Sections 22-24-4.3,
3 22-24-4.5, 22-24-5.4 and 22-24-5.6 NMSA 1978, the following
4 provisions govern grant assistance from the fund for a public
5 school capital outlay project not wholly funded pursuant to
6 Section 22-24-4.1 NMSA 1978:

7 (1) all school districts are eligible to apply
8 for funding from the fund, regardless of percentage of
9 indebtedness;

10 (2) priorities for funding shall be determined
11 by using the statewide adequacy standards developed pursuant to
12 Subsection C of this section; provided that:

13 (a) the council shall apply the
14 standards to charter schools to the same extent that they are
15 applied to other public schools; and

16 (b) in an emergency in which the health
17 or safety of students or school personnel is at immediate risk
18 or in which there is a threat of significant property damage,
19 the council may award grant assistance for a project using
20 criteria other than the statewide adequacy standards;

21 (3) the council shall establish criteria to be
22 used in public school capital outlay projects that receive
23 grant assistance pursuant to the Public School Capital Outlay
24 Act. In establishing the criteria, the council shall consider:

25 (a) the feasibility of using design,

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1 build and finance arrangements for public school capital outlay
2 projects;

3 (b) the potential use of more durable
4 construction materials that may reduce long-term operating
5 costs;

6 (c) concepts that promote efficient but
7 flexible utilization of space; and

8 (d) any other financing or construction
9 concept that may maximize the dollar effect of the state grant
10 assistance;

11 (4) no more than ten percent of the combined
12 total of grants in a funding cycle shall be used for
13 retrofitting existing facilities for technology infrastructure;

14 (5) except as provided in Paragraph (6), (8),
15 [~~or~~] (9) or (11) of this subsection, the state share of a
16 project approved and ranked by the council shall be funded
17 within available resources pursuant to the provisions of this
18 paragraph. No later than May 1 of each calendar year, a value
19 shall be calculated for each school district in accordance with
20 the following procedure:

21 (a) the final prior year net taxable
22 value for a school district divided by the MEM for that school
23 district is calculated for each school district;

24 (b) the final prior year net taxable
25 value for the whole state divided by the MEM for the state is

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1 calculated;

2 (c) excluding any school district for
3 which the result calculated pursuant to Subparagraph (a) of
4 this paragraph is more than twice the result calculated
5 pursuant to Subparagraph (b) of this paragraph, the results
6 calculated pursuant to Subparagraph (a) of this paragraph are
7 listed from highest to lowest;

8 (d) the lowest value listed pursuant to
9 Subparagraph (c) of this paragraph is subtracted from the
10 highest value listed pursuant to that subparagraph;

11 (e) the value calculated pursuant to
12 Subparagraph (a) of this paragraph for the subject school
13 district is subtracted from the highest value listed in
14 Subparagraph (c) of this paragraph;

15 (f) the result calculated pursuant to
16 Subparagraph (e) of this paragraph is divided by the result
17 calculated pursuant to Subparagraph (d) of this paragraph;

18 (g) the sum of the property tax mill
19 levies for the prior tax year imposed by each school district
20 on residential property pursuant to Chapter 22, Article 18 NMSA
21 1978, the Public School Capital Improvements Act, the Public
22 School Buildings Act, the Education Technology Equipment Act
23 and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978
24 is calculated for each school district;

25 (h) the lowest value calculated pursuant

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1 to Subparagraph (g) of this paragraph is subtracted from the
2 highest value calculated pursuant to that subparagraph;

3 (i) the lowest value calculated pursuant
4 to Subparagraph (g) of this paragraph is subtracted from the
5 value calculated pursuant to that subparagraph for the subject
6 school district;

7 (j) the value calculated pursuant to
8 Subparagraph (i) of this paragraph is divided by the value
9 calculated pursuant to Subparagraph (h) of this paragraph;

10 (k) if the value calculated for a
11 subject school district pursuant to Subparagraph (j) of this
12 paragraph is less than five-tenths, then, except as provided in
13 Subparagraph (n) or (o) of this paragraph, the value for that
14 school district equals the value calculated pursuant to
15 Subparagraph (f) of this paragraph;

16 (l) if the value calculated for a
17 subject school district pursuant to Subparagraph (j) of this
18 paragraph is five-tenths or greater, then that value is
19 multiplied by five-hundredths;

20 (m) if the value calculated for a
21 subject school district pursuant to Subparagraph (j) of this
22 paragraph is five-tenths or greater, then the value calculated
23 pursuant to Subparagraph (l) of this paragraph is added to the
24 value calculated pursuant to Subparagraph (f) of this
25 paragraph. Except as provided in Subparagraph (n) or (o) of

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1 this paragraph, the sum equals the value for that school
2 district;

3 (n) in those instances in which the
4 calculation pursuant to Subparagraph (k) or (m) of this
5 paragraph yields a value less than one-tenth, one-tenth shall
6 be used as the value for the subject school district;

7 (o) in those instances in which the
8 calculation pursuant to Subparagraph (k) or (m) of this
9 paragraph yields a value greater than one, one shall be used as
10 the value for the subject school district;

11 (p) except as provided in Section
12 22-24-5.7 NMSA 1978 and except as adjusted pursuant to
13 Paragraph (6), (8), [~~or~~] (9) or (11) of this subsection, the
14 amount to be distributed from the fund for an approved project
15 shall equal the total project cost multiplied by a fraction the
16 numerator of which is the value calculated for the subject
17 school district in the current year plus the value calculated
18 for that school district in each of the two preceding years and
19 the denominator of which is three; and

20 (q) as used in this paragraph: 1) "MEM"
21 means the average full-time-equivalent enrollment of students
22 attending public school in a school district on the eightieth
23 and one hundred twentieth days of the prior school year; 2)
24 "total project cost" means the total amount necessary to
25 complete the public school capital outlay project less any

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1 insurance reimbursement received by the school district for the
2 project; and 3) in the case of a state-chartered charter school
3 that has submitted an application for grant assistance pursuant
4 to this section, the "value calculated for the subject school
5 district" means the value calculated for the school district in
6 which the state-chartered charter school is physically located;

7 (6) the amount calculated pursuant to
8 Subparagraph (p) of Paragraph (5) of this subsection shall be
9 reduced by the following procedure:

10 (a) the total of all legislative
11 appropriations made after January 1, 2003 for nonoperating
12 purposes either directly to the subject school district or to
13 another governmental entity for the purpose of passing the
14 money through directly to the subject school district, and not
15 rejected by the subject school district, is calculated;
16 provided that: 1) an appropriation made in a fiscal year shall
17 be deemed to be accepted by a school district unless, prior to
18 June 1 of that fiscal year, the school district notifies the
19 department of finance and administration and the public
20 education department that the district is rejecting the
21 appropriation; 2) the total shall exclude any educational
22 technology appropriation made prior to January 1, 2005 unless
23 the appropriation was on or after January 1, 2003 and not
24 previously used to offset distributions pursuant to the
25 Technology for Education Act; 3) the total shall exclude any

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1 appropriation previously made to the subject school district
2 that is reauthorized for expenditure by another recipient; 4)
3 the total shall exclude one-half of the amount of any
4 appropriation made or reauthorized after January 1, 2007 if the
5 purpose of the appropriation or reauthorization is to fund, in
6 whole or in part, a capital outlay project that, when
7 prioritized by the council pursuant to this section either in
8 the immediately preceding funding cycle or in the current
9 funding cycle, ranked in the top one hundred fifty projects
10 statewide; 5) the total shall exclude the proportionate share
11 of any appropriation made or reauthorized after January 1, 2008
12 for a capital project that will be jointly used by a
13 governmental entity other than the subject school district.
14 Pursuant to criteria adopted by rule of the council and based
15 upon the proposed use of the capital project, the council shall
16 determine the proportionate share to be used by the
17 governmental entity and excluded from the total; and 6) unless
18 the grant award is made to the state-chartered charter school
19 or unless the appropriation was previously used to calculate a
20 reduction pursuant to this paragraph, the total shall exclude
21 appropriations made after January 1, 2007 for nonoperating
22 purposes of a specific state-chartered charter school,
23 regardless of whether the charter school is a state-chartered
24 charter school at the time of the appropriation or later opts
25 to become a state-chartered charter school;

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1 (b) the total of all federal money
2 received by the subject school district for nonoperating
3 purposes pursuant to Title XIV of the American Recovery and
4 Reinvestment Act of 2009 is calculated; provided that: 1)
5 unless the grant award is made to the state-chartered charter
6 school or unless the federal money received was previously used
7 to calculate a reduction pursuant to this paragraph, before the
8 charter school became a state-chartered charter school, the
9 total shall exclude federal money received for nonoperating
10 purposes of a specific state-chartered charter school,
11 regardless of whether the charter school is a state-chartered
12 charter school at the time of receiving the federal money or
13 later opts to become a state-chartered charter school; and 2)
14 the total shall exclude federal money distributed through the
15 fund as grant awards pursuant to the Public School Capital
16 Outlay Act;

17 (c) the value calculated pursuant to
18 Subparagraph (a) of this paragraph is added to the value
19 calculated pursuant to Subparagraph (b) of this paragraph;

20 ~~(b)~~ (d) the applicable fraction used
21 for the subject school district and the current calendar year
22 for the calculation in Subparagraph (p) of Paragraph (5) of
23 this subsection is subtracted from one;

24 ~~(e)~~ (e) the value calculated pursuant
25 to Subparagraph ~~(a)~~ (c) of this paragraph for the subject

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1 school district is multiplied by the amount calculated pursuant
2 to Subparagraph [~~(b)~~] (d) of this paragraph for that school
3 district;

4 [~~(d)~~] (f) the total amount of reductions
5 for the subject school district previously made pursuant to
6 Subparagraph [~~(e)~~] (g) of this paragraph for other approved
7 public school capital outlay projects is subtracted from the
8 amount calculated pursuant to Subparagraph [~~(e)~~] (e) of this
9 paragraph; and

10 [~~(e)~~] (g) the amount calculated pursuant
11 to Subparagraph (p) of Paragraph (5) of this subsection shall
12 be reduced by the amount calculated pursuant to Subparagraph
13 [~~(d)~~] (f) of this paragraph;

14 (7) as used in this subsection:

15 (a) "governmental entity" includes an
16 Indian nation, tribe or pueblo; and

17 (b) "subject school district" means the
18 school district that has submitted the application for funding
19 and in which the approved public school capital outlay project
20 will be located;

21 (8) the amount calculated pursuant to
22 Subparagraph (p) of Paragraph (5) of this subsection, after any
23 reduction pursuant to Paragraph (6) of this subsection, may be
24 increased by an additional five percent if the council finds
25 that the subject school district has been exemplary in

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1 implementing and maintaining a preventive maintenance program.
2 The council shall adopt such rules as are necessary to
3 implement the provisions of this paragraph;

4 (9) the council may adjust the amount of local
5 share otherwise required if it determines that a school
6 district has used all of its local resources. Before making
7 any adjustment to the local share, the council shall consider
8 whether:

9 (a) the school district has insufficient
10 bonding capacity over the next four years to provide the local
11 match necessary to complete the project and, for all
12 educational purposes, has a residential property tax rate of at
13 least ten dollars (\$10.00) on each one thousand dollars
14 (\$1,000) of taxable value, as measured by the sum of all rates
15 imposed by resolution of the local school board plus rates set
16 to pay interest and principal on outstanding school district
17 general obligation bonds;

18 (b) the school district: 1) has fewer
19 than an average of eight hundred full-time-equivalent students
20 on the eightieth and one hundred twentieth days of the prior
21 school year; 2) has at least seventy percent of its students
22 eligible for free or reduced-fee lunch; 3) has a share of the
23 total project cost, as calculated pursuant to provisions of
24 this section, that would be greater than fifty percent; and 4)
25 for all educational purposes, has a residential property tax

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1 rate of at least seven dollars (\$7.00) on each one thousand
 2 dollars (\$1,000) of taxable value, as measured by the sum of
 3 all rates imposed by resolution of the local school board plus
 4 rates set to pay interest and principal on outstanding school
 5 district general obligation bonds; or

6 (c) the school district: 1) has an
 7 enrollment growth rate over the previous school year of at
 8 least two and one-half percent; 2) pursuant to its five-year
 9 facilities plan, will be building a new school within the next
 10 two years; and 3) for all educational purposes, has a
 11 residential property tax rate of at least ten dollars (\$10.00)
 12 on each one thousand dollars (\$1,000) of taxable value, as
 13 measured by the sum of all rates imposed by resolution of the
 14 local school board plus rates set to pay interest and principal
 15 on outstanding school district general obligation bonds; ~~and~~

16 (10) no application for grant assistance from
 17 the fund shall be approved unless the council determines that:

18 (a) the public school capital outlay
 19 project is needed and included in the school district's
 20 five-year facilities plan among its top priorities;

21 (b) the school district has used its
 22 capital resources in a prudent manner;

23 (c) the school district has provided
 24 insurance for buildings of the school district in accordance
 25 with the provisions of Section 13-5-3 NMSA 1978;

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1 (d) the school district has submitted a
2 five-year facilities plan that includes: 1) enrollment
3 projections; 2) a current preventive maintenance plan that has
4 been approved by the council pursuant to Section 22-24-5.3 NMSA
5 1978 and that is followed by each public school in the
6 district; 3) the capital needs of charter schools located in
7 the school district; and 4) projections for the facilities
8 needed in order to maintain a full-day kindergarten program;

9 (e) the school district is willing and
10 able to pay any portion of the total cost of the public school
11 capital outlay project that, according to Paragraph (5), (6),
12 (8) or (9) of this subsection, is not funded with grant
13 assistance from the fund; provided that school district funds
14 used for a project that was initiated after September 1, 2002
15 when the statewide adequacy standards were adopted, but before
16 September 1, 2004 when the standards were first used as the
17 basis for determining the state and school district share of a
18 project, may be applied to the school district portion required
19 for that project;

20 (f) the application includes the capital
21 needs of any charter school located in the school district or
22 the school district has shown that the facilities of the
23 charter school have a smaller deviation from the statewide
24 adequacy standards than other district facilities included in
25 the application; and

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1 (g) the school district has agreed, in
 2 writing, to comply with any reporting requirements or
 3 conditions imposed by the council pursuant to Section 22-24-5.1
 4 NMSA 1978; and

5 (11) the amount distributed from the fund to
 6 the subject school district for an approved high school project
 7 may be increased by an amount up to twenty percent of the total
 8 project cost if:

9 (a) the public high school facility to
 10 be constructed, improved or replaced by the project has
 11 previously qualified for a rural community adjustment pursuant
 12 to the provisions of Section 22-24-5.8 NMSA 1978; and

13 (b) the council finds that the planned
 14 use of the additional distribution will enhance public school
 15 education at the facility, will further the subject school
 16 district's educational plan for student success for students
 17 attending the facility, is needed by and will benefit the
 18 community in which the facility is located and is a prudent use
 19 of state money.

20 C. After consulting with the public school capital
 21 outlay oversight task force and other experts, the council
 22 shall regularly review and update statewide adequacy standards
 23 applicable to all school districts. The standards shall
 24 establish the acceptable level for the physical condition and
 25 capacity of buildings, the educational suitability of

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1 facilities and the need for technological infrastructure.
2 Except as otherwise provided in the Public School Capital
3 Outlay Act, the amount of outstanding deviation from the
4 standards shall be used by the council in evaluating and
5 prioritizing public school capital outlay projects.

6 D. The acquisition of a facility by a school
7 district or charter school pursuant to a financing agreement
8 that provides for lease payments with an option to purchase for
9 a price that is reduced according to lease payments made may be
10 considered a public school capital outlay project and eligible
11 for grant assistance under this section pursuant to the
12 following criteria:

13 (1) no grant shall be awarded unless the
14 council [~~finds that, prior to the purchase of~~] determines that,
15 at the time of exercising the option to purchase the facility
16 by the school district or charter school, the facility will
17 equal or exceed the statewide adequacy standards and the
18 building standards for public school facilities;

19 (2) no grant shall be awarded unless the
20 school district and the need for the facility meet all of the
21 requirements for grant assistance pursuant to the Public School
22 Capital Outlay Act;

23 (3) the total project cost shall equal the
24 total payments that would be due under the agreement if the
25 school district or charter school would eventually acquire

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1 title to the facility;

2 (4) the portion of the total project cost to
3 be paid from the fund may be awarded as one grant, but
4 disbursements from the fund shall be made from time to time as
5 lease payments become due;

6 (5) the portion of the total project cost to
7 be paid by the school district or charter school may be paid
8 from time to time as lease payments become due; and

9 (6) neither a grant award nor any provision of
10 the Public School Capital Outlay Act creates a legal obligation
11 for the school district or charter school to continue the lease
12 from year to year or to purchase the facility.

13 E. In order to encourage private capital investment
14 in the construction of public school facilities, the purchase
15 of a privately owned school facility that is, at the time of
16 application, in use by a school district may be considered a
17 public school capital outlay project and eligible for grant
18 assistance pursuant to this section if the council finds that:

19 (1) at the time of the initial use by the
20 school district, the facility to be purchased equaled or
21 exceeded the statewide adequacy standards and the building
22 standards for public school facilities;

23 (2) at the time of application, attendance at
24 the facility to be purchased is at seventy-five percent or
25 greater of design capacity and the attendance at other schools

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1 in the school district that the students at the facility would
2 otherwise attend is at eighty-five percent or greater of design
3 capacity; and

4 (3) the school district and the capital outlay
5 project meet all of the requirements for grant assistance
6 pursuant to the Public School Capital Outlay Act; provided
7 that, when determining the deviation from the statewide
8 adequacy standards for the purposes of evaluating and
9 prioritizing the project, the students using the facility shall
10 be deemed to be attending other schools in the school district.

11 F. It is the intent of the legislature that grant
12 assistance made pursuant to this section allows every school
13 district to meet the standards developed pursuant to Subsection
14 C of this section; provided, however, that nothing in the
15 Public School Capital Outlay Act or the development of
16 standards pursuant to that act prohibits a school district from
17 using ~~[local]~~ other funds available to the district to exceed
18 the statewide adequacy standards.

19 G. Upon request, the council shall work with, and
20 provide assistance and information to, the public school
21 capital outlay oversight task force.

22 H. The council may establish committees or task
23 forces, not necessarily consisting of council members, and may
24 use the committees or task forces, as well as existing agencies
25 or organizations, to conduct studies, conduct surveys, submit

1 recommendations or otherwise contribute expertise from the
2 public schools, programs, interest groups and segments of
3 society most concerned with a particular aspect of the
4 council's work.

5 I. Upon the recommendation of the public school
6 facilities authority, the council shall develop building
7 standards for public school facilities and shall promulgate
8 other such rules as are necessary to carry out the provisions
9 of the Public School Capital Outlay Act.

10 J. No later than December 15 of each year, the
11 council shall prepare a report summarizing its activities
12 during the previous fiscal year. The report shall describe in
13 detail all projects funded, the progress of projects previously
14 funded but not completed, the criteria used to prioritize and
15 fund projects and all other council actions. The report shall
16 be submitted to the public education commission, the governor,
17 the legislative finance committee, the legislative education
18 study committee and the legislature."

19 Section 6. Section 22-24-6.1 NMSA 1978 (being Laws 2007,
20 Chapter 214, Section 1) is amended to read:

21 "22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER
22 SCHOOL.--All of the provisions of the Public School Capital
23 Outlay Act apply to an application by a state-chartered charter
24 school for grant assistance for a capital project except:

25 A. the portion of the cost of the project to be

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1 paid from the fund shall be calculated pursuant to Paragraph
2 (5) of Subsection B of Section 22-24-5 NMSA 1978 using data
3 from the school district in which the state-chartered charter
4 school is located;

5 B. in calculating a reduction pursuant to Paragraph
6 (6) of Subsection B of Section 22-24-5 NMSA 1978:

7 (1) the amount to be used in Subparagraph (a)
8 of that paragraph shall equal the total of all legislative
9 appropriations made after January 1, 2007 for nonoperating
10 expenses either directly to the charter school or to another
11 governmental entity for the purpose of passing the money
12 through directly to the charter school, regardless of whether
13 the charter school was a state-chartered charter school at the
14 time of the appropriation or later opted to become a state-
15 chartered charter school, except that the total shall not
16 include any such appropriation if, before the charter school
17 became a state-chartered charter school, the appropriation was
18 previously used to calculate a reduction pursuant to Paragraph
19 (6) of Subsection B of Section 22-24-5 NMSA 1978; and

20 (2) the amount to be used in Subparagraph (b)
21 of that paragraph shall equal the total of all federal money
22 received by the charter school for nonoperating purposes
23 pursuant to Title XIV of the American Recovery and Reinvestment
24 Act of 2009, regardless of whether the charter school was a
25 state-chartered charter school at the time of receiving the

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1 federal money or later opted to become a state-chartered
 2 charter school, except that the total shall not include any
 3 such federal money if, before the charter school became a
 4 state-chartered charter school, the money was previously used
 5 to calculate a reduction pursuant to Paragraph (6) of
 6 Subsection B of Section 22-24-5 NMSA 1978; and

7 C. if the council determines that the
 8 state-chartered charter school does not have the resources to
 9 pay all or a portion of the total cost of the capital outlay
 10 project that is not funded with grant assistance from the fund,
 11 to the extent that money is available in the charter school
 12 capital outlay fund, the council shall make an award from that
 13 fund for the remaining amount necessary to pay for the project.
 14 The council may establish, by rule, a procedure for determining
 15 the amount of resources available to the charter school and the
 16 amount needed from the charter school capital outlay fund."

17 Section 7. A new section of the Public School Capital
 18 Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

19 "22-24-5.8. [NEW MATERIAL] RURAL COMMUNITY ADJUSTMENT
 20 FOR CERTAIN FACILITIES.--

21 A. Upon application by a school district pursuant
 22 to rules adopted by the council, the council may decide if a
 23 public high school facility, located within that school
 24 district, qualifies for a rural community adjustment.

25 B. The council shall qualify a public high school

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1 facility for the rural community adjustment if the council
2 determines that:

3 (1) the facility is located in an
4 unincorporated, rural area;

5 (2) the public high school facility is the
6 only facility practicably available for community purposes and
7 is sharing its use with the community, primarily at the school
8 district's expense with little contribution from the community;

9 (3) the community served by the facility does
10 not have adequate infrastructure or resources to acquire its
11 own facilities or to compensate the school district for use of
12 the public high school facility;

13 (4) in calculating the grant assistance from
14 the fund for a project pursuant to Section 22-24-5 NMSA 1978,
15 the value calculated for the school district in which the
16 facility is located pursuant to Subparagraph (k), (m), (n) or
17 (o) of Paragraph (5) of Subsection B of that section is equal
18 to or greater than seven-tenths;

19 (5) averaged over the previous four property
20 tax years, the school district in which the facility is located
21 had a residential property tax rate of at least nine dollars
22 (\$9.00) on each one thousand dollars (\$1,000) of taxable value,
23 as measured by the sum of all rates imposed by resolution of
24 the local school board plus rates set to pay interest and
25 principal on outstanding school district general obligation

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1 bonds;

2 (6) at least seventy percent of the students
3 in the school district in which the facility is located are
4 eligible for free or reduced-fee lunch; and

5 (7) the school district has complied with all
6 rules adopted by the council for the implementation of the
7 provisions of this section.

8 C. Upon the award of a capital outlay grant
9 pursuant to Section 22-24-5 NMSA 1978 for a public school
10 facility that has qualified for a rural community adjustment
11 pursuant to the provisions of this section, pursuant to
12 Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978,
13 the school district shall be eligible for an additional
14 distribution to benefit that facility."

15 Section 8. Section 22-25-2 NMSA 1978 (being Laws 1975
16 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

17 "22-25-2. DEFINITIONS.--As used in the Public School
18 Capital Improvements Act:

19 A. "program unit" means the product of the program
20 element multiplied by the applicable cost differential factor,
21 as defined in Section 22-8-2 NMSA 1978; and

22 B. "capital improvements" means expenditures,
23 including payments made with respect to lease-purchase
24 arrangements as defined in the Education Technology Equipment
25 Act or the Public School Lease Purchase Act but excluding any

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1 other debt service expenses, for:

2 (1) erecting, remodeling, making additions to,
3 providing equipment for or furnishing public school buildings;

4 ~~[(2) payments made pursuant to a financing~~
5 ~~agreement entered into by a school district or a charter school~~
6 ~~for the leasing of a building or other real property with an~~
7 ~~option to purchase for a price that is reduced according to~~
8 ~~payments made;~~

9 ~~(3)]~~ (2) purchasing or improving public school
10 grounds;

11 ~~[(4)]~~ (3) maintenance of public school
12 buildings or public school grounds, including the purchasing or
13 repairing of maintenance equipment, participating in the
14 facility information management system as required by the
15 Public School Capital Outlay Act and including payments under
16 contracts with regional education cooperatives for maintenance
17 support services and expenditures for technical training and
18 certification for maintenance and facilities management
19 personnel, but excluding salary expenses of school district
20 employees;

21 ~~[(5)]~~ (4) purchasing activity vehicles for
22 transporting students to extracurricular school activities; or

23 ~~[(6)]~~ (5) purchasing computer software and
24 hardware for student use in public school classrooms."

25 Section 9. Section 22-25-3 NMSA 1978 (being Laws 1975

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1 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

2 "22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT
3 QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

4 A. A local school board may adopt a resolution to
5 submit to the qualified electors of the school district the
6 question of whether a property tax should be imposed upon the
7 net taxable value of property allocated to the school district
8 under the Property Tax Code at a rate not to exceed that
9 specified in the resolution for the purpose of capital
10 improvements in the school district. The resolution shall:

11 ~~[A.]~~ (1) identify the capital improvements for
12 which the revenue proposed to be produced will be used;

13 ~~[B.]~~ (2) specify the rate of the proposed tax,
14 which shall not exceed two dollars (\$2.00) on each one thousand
15 dollars (\$1,000) of net taxable value of property allocated to
16 the school district under the Property Tax Code;

17 ~~[C.]~~ (3) specify the date an election will be
18 held to submit the question of imposition of the tax to the
19 qualified electors of the district; and

20 ~~[D.]~~ (4) limit the imposition of the proposed
21 tax to no more than six property tax years.

22 B. On or after July 1, 2009, a resolution submitted
23 to the qualified electors pursuant to Subsection A of this
24 section shall include capital improvements funding for a
25 locally chartered or state-chartered charter school located

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1 within the school district if the charter school timely
2 provides the necessary information to the school district for
3 inclusion in the resolution that identifies the capital
4 improvements of the charter school for which the revenue
5 proposed to be produced will be used."

6 Section 10. Section 22-25-7 NMSA 1978 (being Laws 1975
7 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

8 "22-25-7. IMPOSITION OF TAX--LIMITATION ON
9 EXPENDITURES.--

10 A. If as a result of an election held in accordance
11 with the Public School Capital Improvements Act a majority of
12 the qualified electors voting on the question [~~vote~~] votes in
13 favor of the imposition of the tax, the tax rate shall be
14 certified, unless the local school board requests by resolution
15 that a rate be discontinued, by the department of finance and
16 administration at the rate specified in the resolution
17 authorized under Section 22-25-3 NMSA 1978 or at any lower rate
18 required by operation of the rate limitation provisions of
19 Section 7-37-7.1 NMSA 1978 upon the rate specified in the
20 resolution and be imposed at the rate certified in accordance
21 with the provisions of the Property Tax Code.

22 B. The revenue produced by the tax and, except as
23 provided in Subsection F, G or H of Section 22-25-9 NMSA 1978,
24 any state distribution resulting to the district under the
25 Public School Capital Improvements Act shall be expended only

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1 for the capital improvements specified in the authorizing
2 resolution.

3 C. For resolutions approved by the electors on or
4 after July 1, 2009, the amount of tax revenue to be distributed
5 to each charter school that was included in the resolution
6 shall be determined each year and shall be in the same
7 proportion as the average full-time-equivalent enrollment of
8 the charter school on the fortieth day of the prior school year
9 is to the total such enrollment in the school district;
10 provided that no distribution shall be made to an approved
11 charter school that had not commenced classroom instruction in
12 the prior school year and, provided further, that, in
13 determining a school district's total enrollment, students
14 attending a state-chartered charter school within that school
15 district shall be included. Each year, the department shall
16 certify to the county treasurer of the county in which the
17 eligible charter schools in the school district are located the
18 percentage of the revenue to be distributed to each charter
19 school. The county treasurer shall distribute the charter
20 school's share of the property tax revenue directly to the
21 charter school."

22 Section 11. Section 22-25-9 NMSA 1978 (being Laws 1975
23 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

24 "22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING
25 TAX UNDER CERTAIN CIRCUMSTANCES.--

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1 A. Except as provided in Subsection C or G of this
2 section, the secretary shall distribute to any school district
3 that has imposed a tax under the Public School Capital
4 Improvements Act an amount from the public school capital
5 improvements fund that is equal to the amount by which the
6 revenue estimated to be received from the imposed tax, at the
7 rate certified by the department of finance and administration
8 in accordance with Section 22-25-7 NMSA 1978, assuming a one
9 hundred percent collection rate, is less than an amount
10 calculated by multiplying the school district's first forty
11 days' total program units by the amount specified in Subsection
12 B of this section and further multiplying the product obtained
13 by the tax rate approved by the qualified electors in the most
14 recent election on the question of imposing a tax under the
15 Public School Capital Improvements Act. The distribution shall
16 be made each year that the tax is imposed in accordance with
17 Section 22-25-7 NMSA 1978; provided that no state distribution
18 from the public school capital improvements fund may be used
19 for capital improvements to any administration building of a
20 school district. In the event that sufficient funds are not
21 available in the public school capital improvements fund to
22 make the state distribution provided for in this section, the
23 dollar per program unit figure shall be reduced as necessary.

24 B. In calculating the state distribution pursuant
25 to Subsection A of this section, the following amounts shall be
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1 used:

2 (1) the amount calculated pursuant to
3 Subsection D of this ~~[subsection]~~ section per program unit; and

4 (2) an additional amount certified to the
5 secretary by the public school capital outlay council. No
6 later than June 1 of each year, the council shall determine the
7 amount needed in the next fiscal year for public school capital
8 outlay projects pursuant to the Public School Capital Outlay
9 Act and the amount of revenue, from all sources, available for
10 the projects. If, in the sole discretion of the council, the
11 amount available exceeds the amount needed, the council may
12 certify an additional amount pursuant to this paragraph;
13 provided that the sum of the amount calculated pursuant to this
14 paragraph plus the amount in Paragraph (1) of this subsection
15 shall not result in a total statewide distribution that, in the
16 opinion of the council, exceeds one-half of the total revenue
17 estimated to be received from taxes imposed pursuant to the
18 Public School Capital Improvements Act.

19 C. For any fiscal year notwithstanding the amount
20 calculated to be distributed pursuant to Subsections A and B of
21 this section, except as provided in Subsection G of this
22 section, a school district, the voters of which have approved a
23 tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a
24 distribution less than the amount calculated pursuant to
25 Subsection E of this section multiplied by the school

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1 district's first forty days' total program units and further
2 multiplying the product obtained by the approved tax rate.

3 D. For purposes of calculating the distribution
4 pursuant to Subsection B of this section, the amount used in
5 Paragraph (1) of that subsection shall equal seventy dollars
6 (\$70.00) in fiscal year 2008 and in each subsequent fiscal year
7 shall equal the amount for the previous fiscal year adjusted by
8 the percentage increase between the next preceding calendar
9 year and the preceding calendar year of the consumer price
10 index for the United States, all items, as published by the
11 United States department of labor.

12 E. For purposes of calculating the minimum
13 distribution pursuant to Subsection C of this section, the
14 amount used in that subsection shall equal five dollars (\$5.00)
15 through fiscal year 2005 and in each subsequent fiscal year
16 shall equal the amount for the previous fiscal year adjusted by
17 the percentage increase between the next preceding calendar
18 year and the preceding calendar year of the consumer price
19 index for the United States, all items, as published by the
20 United States department of labor.

21 F. In expending distributions made pursuant to this
22 section, school districts and charter schools shall give
23 priority to maintenance projects, including payments under
24 contracts with regional education cooperatives for maintenance
25 support services. In addition, distributions made pursuant to

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1 this section may be expended by school districts [~~for the~~
2 ~~school district portion of~~] and charter schools as follows:

3 (1) for the school district portion of the
4 total project cost for roof repair or replacement required by
5 Section 22-24-4.3 NMSA 1978; or

6 (2) for the school district portion of
7 payments made under a financing agreement entered into by a
8 school district or a charter school for the leasing of a
9 building or other real property with an option to purchase for
10 a price that is reduced according to the payments made, if the
11 school district has received a grant for the state share of the
12 payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

13 G. If a serious deficiency in a roof of a public
14 school facility has been corrected pursuant to Section
15 22-24-4.4 NMSA 1978 and the school district has refused to pay
16 its share of the cost as determined by that section, until the
17 public school capital outlay fund is reimbursed in full for the
18 share attributed to the district, the distribution calculated
19 pursuant to this section shall not be made to the school
20 district but shall be made to the public school capital outlay
21 fund.

22 H. A portion of each distribution made by the state
23 pursuant to this section on or after July 1, 2009 shall be
24 further distributed by the school district to each locally
25 chartered or state-chartered charter school located within the

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1 school district. The amount to be distributed to each charter
2 school shall be in the same proportion as the average
3 full-time-equivalent enrollment of the charter school on the
4 fortieth day of the prior school year is to the total such
5 enrollment in the school district; provided that no
6 distribution shall be made to an approved charter school that
7 had not commenced classroom instruction in the prior school
8 year. Each year, the department shall certify to the school
9 district the amount to be distributed to each charter school.
10 Distributions received by a charter school pursuant to this
11 subsection shall be expended pursuant to the provisions of the
12 Public School Capital Improvements Act; except that if capital
13 improvements for the charter school were not identified in a
14 resolution approved by the electors, the charter school may
15 expend the distribution for any capital improvements, including
16 those specified in Subsection F of this section.

17 I. In determining a school district's total program
18 units pursuant to Subsections A and C of this section and a
19 school district's total enrollment pursuant to Subsection H of
20 this section, students attending a state-chartered charter
21 school within the school district shall be included.

22 [~~H.~~] J. In making distributions pursuant to this
23 section, the secretary shall include such reporting
24 requirements and conditions as are required by rule of the
25 public school capital outlay council. The council shall adopt

.177670.4

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1 such requirements and conditions as are necessary to ensure
2 that the distributions are expended in the most prudent manner
3 possible and are consistent with the original purpose as
4 specified in the authorizing resolution. Copies of reports or
5 other information received by the secretary in response to the
6 requirements and conditions shall be forwarded to the council."

7 Section 12. EMERGENCY.--It is necessary for the public
8 peace, health and safety that this act take effect immediately.

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